

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CHRISTOPHER LEE CUSHMAN,

Defendant-Appellant.

UNPUBLISHED

September 11, 2008

No. 279240

Wayne Circuit Court

LC No. 06-013957-01

Before: Whitbeck, P.J., and Bandstra and Donofrio, JJ.

PER CURIAM.

Defendant appeals as of right his bench trial conviction of first-degree retail fraud, MCL 750.356c(2). The trial court sentenced defendant as a fourth habitual offender, MCL 769.12, to 42 to 120 months in prison. Defendant challenges the trial court's denial of his request to represent himself. Because the trial court did not abuse its discretion by denying defendant's midtrial request to proceed in pro per, we affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

At trial, as the prosecution attempted to rest its case, defendant's attorney informed the trial court that defendant wished to represent himself. The trial court denied defendant's request, making mention of the late juncture at which the request came.

Defendant argues on appeal that the denial of his request to represent himself violated his constitutional and statutory right to represent himself. We review a trial court's decision on a defendant's request to represent himself for an abuse of discretion. *People v Ahumada*, 222 Mich App 612, 617; 564 NW2d 188 (1997). An abuse of discretion occurs when the trial court's ruling falls outside the range of principled outcomes. *People v Babcock*, 469 Mich 247, 269; 666 NW2d 231 (2003).

While the right to represent oneself in a criminal proceeding is guaranteed implicitly by the United States Constitution, US Const, Am VI, and explicitly by the Michigan constitution, Const 1963, art 1, § 13; and by statute, MCL 763.1, the right is not absolute. *People v Anderson*, 398 Mich 361, 366-367; 247 NW2d 857 (1976). A defendant must meet three requirements before a request to proceed in pro per may be granted: (1) the request must be unequivocal; (2) once the defendant has unequivocally declared his desire, the trial court must determine whether the defendant is asserting the right knowingly, intelligently, and voluntarily; and (3) the court

must determine that, while proceeding in pro per, defendant will not disrupt, unduly inconvenience, or burden the court and the administration of its business. *Id.*

In *Faretta v California*, 422 US 806, 817-818, 835; 95 S Ct 2525; 45 L Ed 2d 562 (1975), the Supreme Court took into account the timeliness of a request to proceed in pro per, calling it “weeks before trial.” *Farretta* does not hold that timeliness is necessary, but does discuss timeliness as a factor for the trial court to consider in coming to its decision. *Id.* In *United States v Martin*, 25 F3d 293, 295-296 (CA 6, 1994), the court held that, “[e]ven where the right to self-representation is clearly invoked, it must be done so in a timely manner, and courts will balance any such assertion against considerations of judicial delay.” The *Martin* Court referenced the holding in *Robards v Rees*, 789 F2d 379, 383 (CA6, 1986), that “because the defendant’s motion was not timely, the trial court did not abuse its discretion in denying the request.” *Martin, supra* at 293. Similarly, discussing the timeliness of a request to proceed in pro per as a factor, the *Anderson* Court said, “[a]lthough the potential for delay and inconvenience to the court may be greater if the request is made during trial, that will not invariably be the case.” *Anderson, supra* at 368.

In this case, defendant did not request to proceed in pro per until the prosecution was resting its case. This is almost certainly an untimely request, and as such had the trial court granted the motion, the proceedings would likely have been disrupted and delayed. Considering the circumstances, we conclude that the trial court’s decision to deny defendant’s request to proceed in pro per, made in the midst of trial, was not outside the range of principled outcomes. *Babcock, supra* at 269. Thus, the trial court did not abuse its discretion in denying defendant’s request to represent himself at trial.

Affirmed.

/s/ William C. Whitbeck
/s/ Richard A. Bandstra
/s/ Pat M. Donofrio